

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIGHTHOUSE COMMUNITY CHURCH
OF GOD,

No. 05-40220

Plaintiff,

District Judge Paul V. Gadola

v.

Magistrate Judge R. Steven Whalen

CITY OF SOUTHFIELD, et. Al.

Defendant.

_____ /

ORDER

Before the Court is Plaintiff's Emergency Motion to Compel the Trial Testimony and/or Deposition De Bene Esse of Jonathan Halberg [Docket #164], which has been referred for hearing and determination pursuant to 28 U.S. C. §636(b)(1)A). A telephonic hearing was conducted on December 21, 2006. The Court being thus fully advised,

IT IS THEREFORE ORDERED that Plaintiff's request to compel the trial testimony of Mr. Halberg is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Plaintiff's request, pursuant to Fed.R.Civ.P. 30(a)(2)B), to conduct a second deposition of Mr. Halberg (characterized by Plaintiff as a deposition de bene esse) is GRANTED. Said deposition may be held as early as December 23, 2006, and may be videotaped.

IT IS FURTHER ORDERED that no later than 4:00 p.m. on December 21, 2006,

Defendant shall provide to Plaintiff's counsel all contact information that is in its possession, control, or reasonable ability to obtain, concerning Jonathan Halberg, including but not limited to Mr. Halberg's last known address and telephone number and any other addresses and telephone numbers associated with Mr. Halberg.

IT IS FURTHER ORDERED that if Mr. Halberg cannot be served with a deposition subpoena or deposed, and is unavailable as a witness at the time of trial, no documents produced at his previous deposition on or about May 12, 2006, whether admitted as deposition exhibits or not, shall be deemed inadmissible at trial for foundational purposes, and shall be admitted at trial subject to any non-foundational objections such as relevance, privilege, etc.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: December 21, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 21, 2006.

S/Gina Wilson
Judicial Assistant